

AMENDED IN SENATE JUNE 20, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1727

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Feuer, Krekorian, Laird, Levine, and Lieber)**

March 6, 2007

An act to amend ~~Sections 1456, 1457, 1458, 1830, 2250, 2250.6, 2543, 2620.2, and 21350 of Section 56.10 of the Civil Code, and to amend Sections 1456, 1457, 1458, 1800.3, 1826, 1830, 1851, 2250, 2250.6, 2257, 2320, 2543, 2590, 2591, 2591.5, 2620.2, 2628, 2923, and 21350 of, to amend and renumber the headings of Chapter 2 (commencing with Section 2920), Chapter 3 (commencing with Section 2940), and Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of, to add Sections 1456.5, 1851.2, 2217, 2451.5, 2620.1, and 2647 to, and to add Chapter 2 (commencing with Section 2910) to Part 5 of Division 4 of, the Probate Code, relating to conservators and guardians.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1727, as amended, Committee on Judiciary. Conservators and guardians.

(1) Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information. Existing state law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions,

including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. Existing law provides that if a person in a county requires a guardian or conservator and there is no one else who is qualified and willing to act, then a public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.

This bill would authorize a public guardian or a county's adult protective services agency, upon a showing of probable cause that a person is in substantial danger of abuse or neglect, to petition a court for orders in connection with an investigation of whether the appointment of the public guardian would be appropriate. These orders would provide for the authorized release of confidential medical information and financial information, and would specify certain conditions to the release of medical information, including the obligation of the public guardian and adult protective services agency to keep information acquired under the order confidential. The bill would revise provisions permitting release of confidential medical information to a probate court investigator. By changing the definition of a crime, this bill would impose a state-mandated local program. The bill would also require the Judicial Council to adopt rules of court necessary for an expedited procedure that would authorize by court order a release of confidential medical information.

(1)

(2) Existing law governs the establishment of conservatorships and guardianships. Existing law requires the Judicial Council to create a rule specifying the qualifications of judges and various court personnel connected with probate matters and to develop a specified educational program for nonprofessional conservators and guardians. Existing law creates various notification requirements in connection with conservatorships and temporary conservatorships. Existing law requires a court investigator to interview a proposed conservatee's relatives, as specified. *Existing law requires guardians and conservators to file inventories and accountings of estates with courts.* Existing law regulates the sale of estate property by a guardian or conservator.

This bill, *among other things*, would require the Judicial Council to consult with ~~a specified professional association~~ *associations* in

connection with the establishment of the rule relating to qualifications and educational requirements of court personnel. The bill would require the Judicial Council to develop the educational program for nonprofessional conservators and guardians by January 1, 2008. *This bill would prohibit a conservatorship of the person or of the estate from being granted unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. The bill would create new requirements on courts when guardianships and conservatorships are transferred from other jurisdictions.* The bill would require a conservator to mail the order appointing the conservator and a specified notice to the conservatee and the conservatee's relatives within 30 days of the issuance of the order. The bill would establish notice requirements for termination of a temporary conservatorship under specified circumstances. ~~The bill would revise the time within which a court investigator is to interview a proposed conservatee's relatives.~~ *The bill would require private professional conservators to provide information about themselves and their association with proposed conservatees in certain petitions. The bill would require courts to assure compliance with requirements regarding inventories and accountings, and with requirements for submission of a care plan and a report contingent upon the passage of SB 800, in one of 2 specified ways. The bill would revise requirements to which a personal representative must conform in selling estate property. The bill would also make technical corrections.*

(3) *Existing law requires that each conservatorship be reviewed periodically, as specified, estate assets accounted, and requires a court investigator to visit the conservatee and report to the court regarding the appropriateness of the conservatorship.*

This bill would require, as part of a review of a conservatorship, that a court investigator review the accounting of the conservatee's estate with the conservatee, to the extent practicable, and would revise the time within which the investigator is to interview a proposed conservatee's relatives. The bill would also require that specified confidential information be kept in separate attachments and not provided in reports sent to certain relatives of a conservatee. The bill would require courts to coordinate investigations with filings of accounting if feasible. The bill would revise accounting requirements and require the Judicial Council to develop guidelines for reviewing accounting and detecting fraud. The bill would require the Judicial Council, on or before January 1, 2009, to develop and adopt a rule of

court and a Judicial Council form petition for authority to administer psychotropic medications.

(4) Existing law requires every person appointed as a guardian or conservator to post a bond approved by the court before a letter of guardianship or conservatorship is issued.

This bill would provide that attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duties shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond.

(5) Existing law permits a court, in its discretion, to grant a conservator or guardian specified powers to be exercised without further court authorization, including the power to contract, the power to employ certain advisors and agents, the power to employ attorneys, as specified, and the power to purchase tangible personal property. Existing law permits a guardian or conservator to exercise other powers without court authorization unless authorization is otherwise specifically required.

This bill would permit the powers, described above, to be exercised generally without court authorization. The bill would specify that a guardian or conservator does not have certain other powers without express authorization by a court or other provisions of law and would revise the descriptions of these powers. The bill would prohibit payment of any attorney's fees from the estate of a ward or conservatee without prior court order.

(6) Existing law requires a public guardian to comply with specified continuing education requirements.

This bill would extend this requirement to a public administrator and a public conservator. By increasing the duties of local officials, this bill would impose a state-mandated local program.

~~(2)~~

(7) Existing law invalidates any provision of any instrument that makes a donative transfer to a care custodian of a dependent adult who is the transferor, except as specified.

This bill would revise these provisions to invalidate only transfer provisions in those instruments that are dated after the date the person receiving the transfer became the care custodian for that transferor.

(8) This bill would provide that one of its provisions would become operative only if SB 800 is also enacted.

(9) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56.10 of the Civil Code is amended to
2 read:

3 56.10. (a) No provider of health care, health care service plan,
4 or contractor shall disclose medical information regarding a patient
5 of the provider of health care or an enrollee or subscriber of a
6 health care service plan without first obtaining an authorization,
7 except as provided in subdivision (b) or (c).

8 (b) A provider of health care, a health care service plan, or a
9 contractor shall disclose medical information if the disclosure is
10 compelled by any of the following:

11 (1) By a court pursuant to an order of that court.

12 (2) By a board, commission, or administrative agency for
13 purposes of adjudication pursuant to its lawful authority.

14 (3) By a party to a proceeding before a court or administrative
15 agency pursuant to a subpoena, subpoena duces tecum, notice to
16 appear served pursuant to Section 1987 of the Code of Civil
17 Procedure, or any provision authorizing discovery in a proceeding
18 before a court or administrative agency.

19 (4) By a board, commission, or administrative agency pursuant
20 to an investigative subpoena issued under Article 2 (commencing
21 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
22 2 of the Government Code.

23 (5) By an arbitrator or arbitration panel, when arbitration is
24 lawfully requested by either party, pursuant to a subpoena duces
25 tecum issued under Section 1282.6 of the Code of Civil Procedure,

1 or any other provision authorizing discovery in a proceeding before
2 an arbitrator or arbitration panel.

3 (6) By a search warrant lawfully issued to a governmental law
4 enforcement agency.

5 (7) By the patient or the patient's representative pursuant to
6 Chapter 1 (commencing with Section 123100) of Part 1 of Division
7 106 of the Health and Safety Code.

8 (8) By a coroner, when requested in the course of an
9 investigation by the coroner's office for the purpose of identifying
10 the decedent or locating next of kin, or when investigating deaths
11 that may involve public health concerns, organ or tissue donation,
12 child abuse, elder abuse, suicides, poisonings, accidents, sudden
13 infant deaths, suspicious deaths, unknown deaths, or criminal
14 deaths, or when otherwise authorized by the decedent's
15 representative. Medical information requested by the coroner under
16 this paragraph shall be limited to information regarding the patient
17 who is the decedent and who is the subject of the investigation and
18 shall be disclosed to the coroner without delay upon request.

19 (9) When otherwise specifically required by law.

20 (c) A provider of health care or a health care service plan may
21 disclose medical information as follows:

22 (1) The information may be disclosed to providers of health
23 care, health care service plans, contractors, or other health care
24 professionals or facilities for purposes of diagnosis or treatment
25 of the patient. This includes, in an emergency situation, the
26 communication of patient information by radio transmission or
27 other means between emergency medical personnel at the scene
28 of an emergency, or in an emergency medical transport vehicle,
29 and emergency medical personnel at a health facility licensed
30 pursuant to Chapter 2 (commencing with Section 1250) of Division
31 2 of the Health and Safety Code.

32 (2) The information may be disclosed to an insurer, employer,
33 health care service plan, hospital service plan, employee benefit
34 plan, governmental authority, contractor, or any other person or
35 entity responsible for paying for health care services rendered to
36 the patient, to the extent necessary to allow responsibility for
37 payment to be determined and payment to be made. If (A) the
38 patient is, by reason of a comatose or other disabling medical
39 condition, unable to consent to the disclosure of medical
40 information and (B) no other arrangements have been made to pay

1 for the health care services being rendered to the patient, the
2 information may be disclosed to a governmental authority to the
3 extent necessary to determine the patient's eligibility for, and to
4 obtain, payment under a governmental program for health care
5 services provided to the patient. The information may also be
6 disclosed to another provider of health care or health care service
7 plan as necessary to assist the other provider or health care service
8 plan in obtaining payment for health care services rendered by that
9 provider of health care or health care service plan to the patient.

10 (3) The information may be disclosed to any person or entity
11 that provides billing, claims management, medical data processing,
12 or other administrative services for providers of health care or
13 health care service plans or for any of the persons or entities
14 specified in paragraph (2). However, no information so disclosed
15 shall be further disclosed by the recipient in any way that would
16 be violative of this part.

17 (4) The information may be disclosed to organized committees
18 and agents of professional societies or of medical staffs of licensed
19 hospitals, licensed health care service plans, professional standards
20 review organizations, independent medical review organizations
21 and their selected reviewers, utilization and quality control peer
22 review organizations as established by Congress in Public Law
23 97-248 in 1982, contractors, or persons or organizations insuring,
24 responsible for, or defending professional liability that a provider
25 may incur, if the committees, agents, health care service plans,
26 organizations, reviewers, contractors, or persons are engaged in
27 reviewing the competence or qualifications of health care
28 professionals or in reviewing health care services with respect to
29 medical necessity, level of care, quality of care, or justification of
30 charges.

31 (5) The information in the possession of any provider of health
32 care or health care service plan may be reviewed by any private
33 or public body responsible for licensing or accrediting the provider
34 of health care or health care service plan. However, no
35 patient-identifying medical information may be removed from the
36 premises except as expressly permitted or required elsewhere by
37 law, nor shall that information be further disclosed by the recipient
38 in any way that would violate this part.

39 (6) The information may be disclosed to the county coroner in
40 the course of an investigation by the coroner's office when

1 requested for all purposes not included in paragraph (8) of
2 subdivision (b).

3 (7) The information may be disclosed to public agencies, clinical
4 investigators, including investigators conducting epidemiologic
5 studies, health care research organizations, and accredited public
6 or private nonprofit educational or health care institutions for bona
7 fide research purposes. However, no information so disclosed shall
8 be further disclosed by the recipient in any way that would disclose
9 the identity of any patient or be violative of this part.

10 (8) A provider of health care or health care service plan that has
11 created medical information as a result of employment-related
12 health care services to an employee conducted at the specific prior
13 written request and expense of the employer may disclose to the
14 employee's employer that part of the information that:

15 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
16 or challenge to which the employer and the employee are parties
17 and in which the patient has placed in issue his or her medical
18 history, mental or physical condition, or treatment, provided that
19 information may only be used or disclosed in connection with that
20 proceeding.

21 (B) Describes functional limitations of the patient that may
22 entitle the patient to leave from work for medical reasons or limit
23 the patient's fitness to perform his or her present employment,
24 provided that no statement of medical cause is included in the
25 information disclosed.

26 (9) Unless the provider of health care or health care service plan
27 is notified in writing of an agreement by the sponsor, insurer, or
28 administrator to the contrary, the information may be disclosed to
29 a sponsor, insurer, or administrator of a group or individual insured
30 or uninsured plan or policy that the patient seeks coverage by or
31 benefits from, if the information was created by the provider of
32 health care or health care service plan as the result of services
33 conducted at the specific prior written request and expense of the
34 sponsor, insurer, or administrator for the purpose of evaluating the
35 application for coverage or benefits.

36 (10) The information may be disclosed to a health care service
37 plan by providers of health care that contract with the health care
38 service plan and may be transferred among providers of health
39 care that contract with the health care service plan, for the purpose
40 of administering the health care service plan. Medical information

1 may not otherwise be disclosed by a health care service plan except
2 in accordance with the provisions of this part.

3 (11) Nothing in this part shall prevent the disclosure by a
4 provider of health care or a health care service plan to an insurance
5 institution, agent, or support organization, subject to Article 6.6
6 (commencing with Section 791) of Part 2 of Division 1 of the
7 Insurance Code, of medical information if the insurance institution,
8 agent, or support organization has complied with all requirements
9 for obtaining the information pursuant to Article 6.6 (commencing
10 with Section 791) of Part 2 of Division 1 of the Insurance Code.

11 (12) The information relevant to the patient's condition and care
12 and treatment provided may be disclosed to a probate court
13 investigator ~~engaged in determining the need for an initial~~
14 ~~conservatorship or continuation of an existent conservatorship, if~~
15 ~~the patient is unable to give informed consent in the course of any~~
16 *investigation required or authorized in a conservatorship*
17 *proceeding under the Guardianship-Conservatorship Law as*
18 *defined in Section 1400 of the Probate Code*, or to a probate court
19 investigator, probation officer, or domestic relations investigator
20 engaged in determining the need for an initial guardianship or
21 continuation of an existent guardianship.

22 (13) The information may be disclosed to an organ procurement
23 organization or a tissue bank processing the tissue of a decedent
24 for transplantation into the body of another person, but only with
25 respect to the donating decedent, for the purpose of aiding the
26 transplant. For the purpose of this paragraph, the terms "tissue
27 bank" and "tissue" have the same meaning as defined in Section
28 1635 of the Health and Safety Code.

29 (14) The information may be disclosed when the disclosure is
30 otherwise specifically authorized by law, such as the voluntary
31 reporting, either directly or indirectly, to the federal Food and Drug
32 Administration of adverse events related to drug products or
33 medical device problems.

34 (15) Basic information, including the patient's name, city of
35 residence, age, sex, and general condition, may be disclosed to a
36 state or federally recognized disaster relief organization for the
37 purpose of responding to disaster welfare inquiries.

38 (16) The information may be disclosed to a third party for
39 purposes of encoding, encrypting, or otherwise anonymizing data.
40 However, no information so disclosed shall be further disclosed

1 by the recipient in any way that would be violative of this part,
2 including the unauthorized manipulation of coded or encrypted
3 medical information that reveals individually identifiable medical
4 information.

5 (17) For purposes of disease management programs and services
6 as defined in Section 1399.901 of the Health and Safety Code,
7 information may be disclosed as follows: (A) to any entity
8 contracting with a health care service plan or the health care service
9 plan's contractors to monitor or administer care of enrollees for a
10 covered benefit, provided that the disease management services
11 and care are authorized by a treating physician, or (B) to any
12 disease management organization, as defined in Section 1399.900
13 of the Health and Safety Code, that complies fully with the
14 physician authorization requirements of Section 1399.902 of the
15 Health and Safety Code, provided that the health care service plan
16 or its contractor provides or has provided a description of the
17 disease management services to a treating physician or to the health
18 care service plan's or contractor's network of physicians. Nothing
19 in this paragraph shall be construed to require physician
20 authorization for the care or treatment of the adherents of any
21 well-recognized church or religious denomination who depend
22 solely upon prayer or spiritual means for healing in the practice
23 of the religion of that church or denomination.

24 (18) The information may be disclosed, as permitted by state
25 and federal law or regulation, to a local health department for the
26 purpose of preventing or controlling disease, injury, or disability,
27 including, but not limited to, the reporting of disease, injury, vital
28 events such as birth or death, and the conduct of public health
29 surveillance, public health investigations, and public health
30 interventions, as authorized or required by state or federal law or
31 regulation.

32 (d) Except to the extent expressly authorized by the patient or
33 enrollee or subscriber or as provided by subdivisions (b) and (c),
34 no provider of health care, health care service plan, contractor, or
35 corporation and its subsidiaries and affiliates shall intentionally
36 share, sell, use for marketing, or otherwise use any medical
37 information for any purpose not necessary to provide health care
38 services to the patient.

39 (e) Except to the extent expressly authorized by the patient or
40 enrollee or subscriber or as provided by subdivisions (b) and (c),

1 no contractor or corporation and its subsidiaries and affiliates shall
2 further disclose medical information regarding a patient of the
3 provider of health care or an enrollee or subscriber of a health care
4 service plan or insurer or self-insured employer received under
5 this section to any person or entity that is not engaged in providing
6 direct health care services to the patient or his or her provider of
7 health care or health care service plan or insurer or self-insured
8 employer.

9 **SECTION 1.**

10 *SEC. 2.* Section 1456 of the Probate Code is amended to read:

11 1456. (a) In addition to any other requirements that are part
12 of the judicial branch education program, on or before January 1,
13 2008, the Judicial Council shall adopt a rule of court that shall do
14 all of the following:

15 (1) Specifies the qualifications of a court-employed staff
16 attorney, examiner, and investigator, and any attorney appointed
17 pursuant to Sections 1470 and 1471.

18 (2) Specifies the number of hours of education in classes related
19 to conservatorships or guardianships that a judge who is regularly
20 assigned to hear probate matters shall complete, upon assuming
21 the probate assignment, and then over a three-year period on an
22 ongoing basis.

23 (3) Specifies the number of hours of education in classes related
24 to conservatorships or guardianships that a court-employed staff
25 attorney, examiner, and investigator, and any attorney appointed
26 pursuant to Sections 1470 and 1471 shall complete each year.

27 (4) Specifies the particular subject matter that shall be included
28 in the education required each year.

29 (5) Specifies reporting requirements to ensure compliance with
30 this section.

31 (b) In formulating the rule required by this section, the Judicial
32 Council shall consult with interested parties, including, but not
33 limited to, the California Judges Association, the California
34 Association of Superior Court Investigators, the California Public
35 Defenders Association, the County Counsels' Association of
36 California, the State Bar of California, the National Guardianship
37 Association, the Professional Fiduciary Association of California,
38 *the California Association of Public Administrators, Public*
39 *Guardians and Public Conservators, a disability rights*

1 organization, and the Association of Professional Geriatric Care
2 Managers.

3 *SEC. 3. Section 1456.5 is added to the Probate Code, to read:*

4 *1456.5. Each court shall assure compliance with the*
5 *requirements of filing the inventory and appraisal and the*
6 *accountings required by this division. Courts may comply with*
7 *this section in either of the following ways:*

8 *(a) By placing on the court's calendar, at the time of the*
9 *appointment of the guardian or conservator and at the time of*
10 *approval of each accounting, a future hearing date to enable the*
11 *court to confirm timely compliance with these requirements.*

12 *(b) By establishing and maintaining internal procedures to*
13 *generate an order for appearance and consideration of appropriate*
14 *sanctions or other actions if the guardian or conservator fails to*
15 *comply with the requirements of this section.*

16 *SEC. 3.5. Section 1456.5 is added to the Probate Code, to read:*

17 *1456.5. Each court shall assure compliance with the*
18 *requirements for submitting the care plan described in Section*
19 *1831, the followup report described in Section 1832, and filing*
20 *the inventory and appraisal and the accountings required by this*
21 *division. Courts may comply with this section in either of the*
22 *following ways:*

23 *(a) By placing on the court's calendar, at the time of the*
24 *appointment of the guardian or conservator and at the time of*
25 *approval of each accounting, a future hearing date to enable the*
26 *court to confirm timely compliance with these requirements.*

27 *(b) By establishing and maintaining internal procedures to*
28 *generate an order for appearance and consideration of appropriate*
29 *sanctions or other actions if the guardian or conservator fails to*
30 *comply with the requirements of this section.*

31 ~~*SEC. 2.*~~

32 *SEC. 4. Section 1457 of the Probate Code is amended to read:*

33 *1457. In order to assist relatives and friends who may seek*
34 *appointment as a nonprofessional conservator or guardian the*
35 *Judicial Council shall, on or before January 1, 2008, develop a*
36 *short educational program of no more than three hours that is*
37 *user-friendly and shall make that program available free of charge*
38 *to each proposed conservator and guardian and each*
39 *court-appointed conservator and guardian who is not required to*
40 *be licensed as a professional conservator or guardian pursuant to*

Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code. The program may be available by video presentation or Internet access.

~~SEC. 3.~~

SEC. 5. Section 1458 of the Probate Code is amended to read:

1458. (a) On or before January 1, 2008, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases. The report shall include all of the following with respect to the courts chosen for evaluation:

(1) A summary of caseload statistics, including both temporary and permanent conservatorships, bonds, court investigations, accountings, and use of professional conservators.

(2) An analysis of compliance with statutory timeframes.

(3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes.

(b) The Judicial Council shall select three courts for the evaluation mandated by this section.

(c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 6. *Section 1800.3 of the Probate Code is amended to read:*

1800.3. (a) If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(1) A conservator of the person or estate of an adult, or both.

(2) A conservator of the person of a minor who is married or whose marriage has been dissolved.

~~(b) Notwithstanding subdivision (a), a conservatorship of the person may not be established for a nonresident of this state if a conservatorship has been established, or a protective court order has been issued, in another state with respect to that person, or a proceeding to establish a conservatorship or obtain a protective~~

1 court order is pending in another state with respect to that person;
2 unless both of the following are met:

3 (1) The person who is or would be protected by the
4 conservatorship or protective order is in this state.

5 (2) The out-of-state court in which the conservatorship has been
6 established or the protective order has been issued, or in which
7 there is a proceeding to establish a conservatorship or other
8 protective order, has authorized the permanent removal of the
9 person described in paragraph (1) to this state.

10 (e) Subdivision (b) shall be operative only until January 1, 2001.

11 (b) No conservatorship of the person or of the estate shall be
12 granted by the court unless the court makes an express finding
13 that the granting of the conservatorship is the least restrictive
14 alternative needed for the protection of the conservatee.

15 SEC. 7. Section 1826 of the Probate Code, as amended by
16 Section 8 of Chapter 493 of the Statutes of 2006, is amended to
17 read:

18 1826. Regardless of whether the proposed conservatee attends
19 the hearing, the court investigator shall do all of the following:

20 (a) Interview the proposed conservatee personally. The court
21 investigator also shall do all of the following:

22 (1) Interview the petitioner and the proposed conservator, if
23 different from the petitioner.

24 (2) Interview the proposed conservatee's spouse or registered
25 domestic partner and relatives within the first degree.

26 (3) To the greatest extent possible, interview the proposed
27 conservatee's relatives within the second degree, as set forth in
28 subdivision (b) of Section 1821, neighbors, and, if known, close
29 friends, before the hearing.

30 (b) Inform the proposed conservatee of the contents of the
31 citation, of the nature, purpose, and effect of the proceeding, and
32 of the right of the proposed conservatee to oppose the proceeding,
33 to attend the hearing, to have the matter of the establishment of
34 the conservatorship tried by jury, to be represented by legal counsel
35 if the proposed conservatee so chooses, and to have legal counsel
36 appointed by the court if unable to retain legal counsel.

37 (c) Determine whether it appears that the proposed conservatee
38 is unable to attend the hearing and, if able to attend, whether the
39 proposed conservatee is willing to attend the hearing.

1 (d) Review the allegations of the petition as to why the
2 appointment of the conservator is required and, in making his or
3 her determination, do the following:

4 (1) Refer to the supplemental information form submitted by
5 the petitioner and consider the facts set forth in the form that
6 address each of the categories specified in paragraphs (1) to (5),
7 inclusive, of subdivision (a) of Section 1821.

8 (2) Consider, to the extent practicable, whether he or she
9 believes the proposed conservatee suffers from any of the mental
10 function deficits listed in subdivision (a) of Section 811 that
11 significantly impairs the proposed conservatee's ability to
12 understand and appreciate the consequences of his or her actions
13 in connection with any of the functions described in subdivision
14 (a) or (b) of Section 1801 and identify the observations that support
15 that belief.

16 (e) Determine whether the proposed conservatee wishes to
17 contest the establishment of the conservatorship.

18 (f) Determine whether the proposed conservatee objects to the
19 proposed conservator or prefers another person to act as
20 conservator.

21 (g) Determine whether the proposed conservatee wishes to be
22 represented by legal counsel and, if so, whether the proposed
23 conservatee has retained legal counsel and, if not, the name of an
24 attorney the proposed conservatee wishes to retain.

25 (h) Determine whether the proposed conservatee is capable of
26 completing an affidavit of voter registration.

27 (i) If the proposed conservatee has not retained legal counsel,
28 determine whether the proposed conservatee desires the court to
29 appoint legal counsel.

30 (j) Determine whether the appointment of legal counsel would
31 be helpful to the resolution of the matter or is necessary to protect
32 the interests of the proposed conservatee in any case where the
33 proposed conservatee does not plan to retain legal counsel and has
34 not requested the appointment of legal counsel by the court.

35 (k) Report to the court in writing, at least five days before the
36 hearing, concerning all of the foregoing, including the proposed
37 conservatee's express communications concerning both of the
38 following:

39 (1) Representation by legal counsel.

1 (2) Whether the proposed conservatee is not willing to attend
2 the hearing, does not wish to contest the establishment of the
3 conservatorship, and does not object to the proposed conservator
4 or prefer that another person act as conservator.

5 (l) Mail, at least five days before the hearing, a copy of the
6 report referred to in subdivision (k) to all of the following:

7 (1) The attorney, if any, for the petitioner.

8 (2) The attorney, if any, for the proposed conservatee.

9 (3) The proposed conservatee.

10 (4) The spouse, registered domestic partner, and relatives within
11 the first degree of the proposed conservatee who are required to
12 be named in the petition for appointment of the conservator, unless
13 the court determines that the mailing will result in harm to the
14 conservatee.

15 (5) Any other persons as the court orders.

16 (m) The court investigator has discretion to release the report
17 required by this section to the public conservator, interested public
18 agencies, and the long-term care ombudsman.

19 (n) The report required by this section is confidential and shall
20 be made available only to parties, persons described in subdivision
21 (l), persons given notice of the petition who have requested this
22 report or who have appeared in the proceedings, their attorneys,
23 and the court. The court has discretion at any other time to release
24 the report, if it would serve the interests of the conservatee. The
25 clerk of the court shall provide for the limitation of the report
26 exclusively to persons entitled to its receipt.

27 (o) This section does not apply to a proposed conservatee who
28 has personally executed the petition for conservatorship, or one
29 who has nominated his or her own conservator, if he or she attends
30 the hearing.

31 (p) If the court investigator has performed an investigation
32 within the preceding six months and furnished a report thereon to
33 the court, the court may order, upon good cause shown, that another
34 investigation is not necessary or that a more limited investigation
35 may be performed.

36 (q) Any investigation by the court investigator related to a
37 temporary conservatorship also may be a part of the investigation
38 for the general petition for conservatorship, but the court
39 investigator shall make a second visit to the proposed conservatee

1 and the report required by this section shall include the effect of
2 the temporary conservatorship on the proposed conservatee.

3 *(r) The Judicial Council shall, on or before January 1, 2009,*
4 *adopt rules of court and Judicial Council forms as necessary to*
5 *implement an expedited procedure to authorize, by court order, a*
6 *proposed conservatee's health care provider to disclose*
7 *confidential medical information about the proposed conservatee*
8 *to a court investigator pursuant to federal medical information*
9 *privacy regulations promulgated under the Health Insurance*
10 *Portability and Accountability Act of 1996.*

11 ~~SEC. 4.~~

12 SEC. 8. Section 1830 of the Probate Code is amended to read:

13 1830. (a) The order appointing the conservator shall contain,
14 among other things, the names, addresses, and telephone numbers
15 of:

16 (1) The conservator.

17 (2) The conservatee's attorney, if any.

18 (3) The court investigator, if any.

19 (b) In the case of a limited conservator for a developmentally
20 disabled adult, any order the court may make shall include the
21 findings of the court specified in Section 1828.5. The order shall
22 specify the powers granted to and duties imposed upon the limited
23 conservator, which powers and duties may not exceed the powers
24 and duties applicable to a conservator under this code. The order
25 shall also specify the following:

26 (1) The properties of the limited conservatee to which the limited
27 conservator is entitled to possession and management, giving a
28 description of the properties that will be sufficient to identify them.

29 (2) The debts, rentals, wages, or other claims due to the limited
30 conservatee which the limited conservator is entitled to collect, or
31 file suit with respect to, if necessary, and thereafter to possess and
32 manage.

33 (3) The contractual or other obligations which the limited
34 conservator may incur on behalf of the limited conservatee.

35 (4) The claims against the limited conservatee which the limited
36 conservator may pay, compromise, or defend, if necessary.

37 (5) Any other powers, limitations, or duties with respect to the
38 care of the limited conservatee or the management of the property
39 specified in this subdivision by the limited conservator which the
40 court shall specifically and expressly grant.

(c) An information notice of the rights of conservatees shall be attached to the order. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821, within 30 days of the issuance of the order. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

SEC. 9. Section 1851 of the Probate Code, as amended by Section 12.5 of Chapter 493 of the Statutes of 2006, is amended to read:

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. *To the extent practicable, the investigator shall review the accounting with a conservatee who has sufficient capacity.* To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) (1) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report, *modified as set forth in paragraph (2)*, also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(2) *Confidential medical information and confidential information from the California Law Enforcement Telecommunications System shall be in a separate attachment to the report and shall not be provided in copies sent to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative.*

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 10. Section 1851.2 is added to the Probate Code, to read:
1851.2. Each court shall coordinate investigations with the filing of accountings, so that investigators may review accountings before visiting conservatees, if feasible.

SEC. 11. Section 2217 is added to the Probate Code, to read:

2217. (a) When an order has been made transferring venue to another county, the court transferring the matter shall set a hearing within two months to confirm receipt of the notification described in subdivision (b). If the notification has not been made, the transferring court shall make reasonable inquiry into the status of the matter.

(b) When a court receives the file of a transferred guardianship or conservatorship, the court:

(1) Shall send written notification of the receipt to the court that transferred the matter.

(2) Shall take proper action pursuant to ensure compliance by the guardian or conservator with the matters provided in Section 1456.5.

(3) If the case is a conservatorship, may conduct a review, including an investigation, as described in Sections 1851 to 1853, inclusive.

~~SEC. 5.~~

SEC. 12. Section 2250 of the Probate Code, as amended by Section 15 of Chapter 493 of the Statutes of 2006, is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, the petition and all other pleadings related to the petition shall contain the petitioner's registration information. The petition shall contain a declaration explaining who engaged the petitioner or how the petitioner was engaged to

1 *file the petition and what prior relationship the petitioner had with*
2 *the proposed conservatee or the proposed conservatee's family or*
3 *friends.*

4 *(d) If the petition is filed by a party other than the proposed*
5 *conservatee, the petition shall include a declaration of due*
6 *diligence showing both of the following:*

7 *(1) Either the efforts to find relatives or why it was not feasible*
8 *to contact the relatives.*

9 *(2) Either the preferences of the proposed conservatee or why*
10 *it was not feasible to ascertain those preferences.*

11 ~~(e)~~

12 *(e) Unless the court for good cause otherwise orders, at least*
13 *five days before the hearing on the petition, notice of the hearing*
14 *shall be given as follows:*

15 *(1) Notice of the hearing shall be personally delivered to the*
16 *proposed ward if he or she is 12 years of age or older, to the parent*
17 *or parents of the proposed ward, and to any person having a valid*
18 *visitation order with the proposed ward that was effective at the*
19 *time of the filing of the petition. Notice of the hearing shall not be*
20 *delivered to the proposed ward if he or she is under 12 years of*
21 *age. In a proceeding for temporary guardianship of the person,*
22 *evidence that a custodial parent has died or become incapacitated,*
23 *and that the petitioner is the nominee of the custodial parent, may*
24 *constitute good cause for the court to order that this notice not be*
25 *delivered.*

26 *(2) Notice of the hearing shall be personally delivered to the*
27 *proposed conservatee, and notice of the hearing shall be served*
28 *on the persons required to be named in the petition for appointment*
29 *of conservator. If the petition states that the petitioner and the*
30 *proposed conservator have no prior relationship with the proposed*
31 *conservatee and has not been nominated by a family member,*
32 *friend, or other person with a relationship to the proposed*
33 *conservatee, notice of hearing shall be served on the public*
34 *guardian of the county in which the petition is filed.*

35 *(3) A copy of the petition for temporary appointment shall be*
36 *served with the notice of hearing.*

37 ~~(f)~~

38 *(f) If a temporary guardianship is granted ex parte and the*
39 *hearing on the general guardianship petition is not to be held within*
40 *30 days of the granting of the temporary guardianship, the court*

1 shall set a hearing within 30 days to reconsider the temporary
2 guardianship. Notice of the hearing for reconsideration of the
3 temporary guardianship shall be provided pursuant to Section
4 1511, except that the court may for good cause shorten the time
5 for the notice of the hearing.

6 (e)

7 (g) Visitation orders with the proposed ward granted prior to
8 the filing of a petition for temporary guardianship shall remain in
9 effect, unless for good cause the court orders otherwise.

10 (f)

11 (h) (1) If a temporary conservatorship is granted ex parte, and
12 a petition to terminate the temporary conservatorship is filed more
13 than 15 days before the first hearing on the general petition for
14 appointment of conservator, the court shall set a hearing within
15 15 days of the filing of the petition for termination of the temporary
16 conservatorship to reconsider the temporary conservatorship.
17 Unless the court otherwise orders, notice of the hearing on the
18 petition to terminate the temporary conservatorship shall be given
19 at least 10 days prior to the hearing.

20 (2) If a petition to terminate the temporary conservatorship is
21 filed within 15 days before the first hearing on the general petition
22 for appointment of conservator, the court shall set the hearing at
23 the same time that the hearing on the general petition is set. Unless
24 the court otherwise orders, notice of the hearing on the petition to
25 terminate the temporary conservatorship *pursuant to this section*
26 shall be given at least five *court* days prior to the hearing.

27 ~~(g) The appointment of a guardian or conservator and the~~
28 ~~appointment of a temporary guardian or conservator may be~~
29 ~~requested in a single petition or by separate petitions. If the~~
30 ~~appointment of both a guardian or conservator and also a temporary~~
31 ~~guardian or conservator is requested in a single petition, the court~~
32 ~~may not appoint a guardian or conservator without the~~
33 ~~investigations and reviews otherwise required.~~

34 (h)

35 (i) If the court suspends powers of the guardian or conservator
36 under Section 2334 or 2654 or under any other provision of this
37 division, the court may appoint a temporary guardian or conservator
38 to exercise those powers until the powers are restored to the
39 guardian or conservator or a new guardian or conservator is
40 appointed.

(i)

(j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(j)

(k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

~~SEC. 6.~~

SEC. 13. Section 2250.6 of the Probate Code is amended to read:

2250.6. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):

(1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the ~~proceeding~~ *temporary conservatorship*, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

1 (3) Determine whether it appears that the proposed conservatee
2 is unable to attend the hearing and, if able to attend, whether the
3 proposed conservatee is willing to attend the hearing.

4 (4) Determine whether the proposed conservatee wishes to
5 contest the establishment of the conservatorship.

6 (5) Determine whether the proposed conservatee objects to the
7 proposed conservator or prefers another person to act as
8 conservator.

9 (6) Report to the court, in writing, concerning all of the
10 foregoing.

11 (b) If not feasible before the hearing, the court investigator shall
12 do all of the following within two court days after the hearing:

13 (1) Interview the conservatee personally. The court investigator
14 also shall do all of the following:

15 (A) Interview the petitioner and the proposed conservator, if
16 different from the petitioner.

17 (B) To the greatest extent possible, interview the proposed
18 conservatee's spouse or registered domestic partner, relatives
19 within the first degree, neighbors and, if known, close friends.

20 (C) To the extent possible, interview the proposed conservatee's
21 relatives within the second degree as set forth in subdivision (b)
22 of Section 1821.

23 (2) Inform the conservatee of the nature, purpose, and effect of
24 the temporary conservatorship, as well as the right of the
25 conservatee to oppose the proposed general conservatorship, to
26 attend the hearing, to have the matter of the establishment of the
27 conservatorship tried by jury, to be represented by legal counsel
28 if the proposed conservatee so chooses, and to have legal counsel
29 appointed by the court if unable to retain legal counsel.

30 (c) If the investigator does not visit the conservatee until after
31 the hearing at which a temporary conservator was appointed, and
32 the conservatee objects to the appointment of the temporary
33 conservator, or requests an attorney, the court investigator shall
34 report this information promptly, and in no event more than three
35 court days later, to the court. Upon receipt of that information, the
36 court may proceed with appointment of an attorney as provided
37 in Chapter 4 (commencing with Section 1470) of Part 1.

38 (d) If it appears to the court investigator that the temporary
39 conservatorship is inappropriate, the court investigator shall
40 immediately, and in no event more than two court days later,

1 provide a written report to the court so the court can consider taking
2 appropriate action on its own motion.

3 *SEC. 14. Section 2257 of the Probate Code is amended to read:*

4 2257. (a) Except as provided in subdivision (b), the powers
5 of a temporary guardian or temporary conservator terminate
6 ~~(except, except~~ for the rendering of the ~~account)~~ *account*, at the
7 earliest of the following times:

8 (1) The time the temporary guardian or conservator acquires
9 notice that a guardian or conservator is appointed and qualified.

10 (2) Thirty days after the appointment of the temporary guardian
11 or temporary conservator or such earlier time as the court may
12 specify in the order of appointment.

13 (b) With or without notice as the court may require, the court
14 may for good cause order that the time for the termination of the
15 powers of the temporary guardian or temporary conservator be
16 extended *or shortened* pending final determination by the court of
17 the petition for appointment of a guardian or conservator or pending
18 the final decision on appeal therefrom or for other cause. The order
19 which extends the time for termination shall fix the time when the
20 powers of the temporary guardian or temporary conservator
21 terminate except for the rendering of the account.

22 *SEC. 15. Section 2320 of the Probate Code is amended to read:*

23 2320. (a) Except as otherwise provided by statute, every person
24 appointed as guardian or conservator shall, before letters are issued,
25 give a bond approved by the court.

26 (b) The bond shall be for the benefit of the ward or conservatee
27 and all persons interested in the guardianship or conservatorship
28 estate and shall be conditioned upon the faithful execution of the
29 duties of the office, according to law, by the guardian or
30 conservator.

31 (c) Except as otherwise provided by statute, unless the court
32 increases or decreases the amount upon a showing of good cause,
33 the amount of a bond given by an admitted surety insurer shall be
34 the sum of all of the following:

35 (1) The value of the personal property of the estate.

36 (2) The probable annual gross income of all of the property of
37 the estate.

38 (3) The sum of the probable annual gross payments from the
39 following:

1 (A) Part 3 (commencing with Section 11000) of, Part 4
2 (commencing with Section 16000) of, or Part 5 (commencing with
3 Section 17000) of, Division 9 of the Welfare and Institutions Code.

4 (B) Subchapter II (commencing with Section 401) of, or Part
5 A of Subchapter XVI (commencing with Section 1382) of, Chapter
6 7 of Title 42 of the United States Code.

7 (C) Any other public entitlements of the ward or conservatee.

8 (4) On or after January 1, 2008, a reasonable amount for the
9 cost of recovery to collect on the bond, including attorney's fees
10 and costs. *The attorney's fees and costs incurred in a successful*
11 *action for surcharge against a conservator or guardian for breach*
12 *of his or her duty under this code shall be a surcharge against the*
13 *conservator or guardian and, if unpaid, shall be recovered against*
14 *the surety on the bond.* The Judicial Council shall, on or before
15 January 1, 2008, adopt a rule of court to implement this paragraph.

16 (d) If the bond is given by personal sureties, the amount of the
17 bond shall be twice the amount required for a bond given by an
18 admitted surety insurer.

19 (e) The Bond and Undertaking Law (Chapter 2 (commencing
20 with Section 995.010) of Title 14 of Part 2 of the Code of Civil
21 Procedure) applies to a bond given under this article, except to the
22 extent inconsistent with this article.

23 *SEC. 16. Section 2451.5 is added to the Probate Code, to read:*
24 *2451.5. The guardian or conservator may do any of the*
25 *following:*

26 *(a) Contract for the guardianship or conservatorship, perform*
27 *outstanding contracts, and, thereby, bind the estate.*

28 *(b) Purchase tangible personal property.*

29 *(c) Subject to the provisions of Chapter 8 (commencing with*
30 *Section 2640), employ an attorney to advise and represent the*
31 *guardian or conservator in all matters, including the*
32 *conservatorship proceeding and all other actions or proceedings.*

33 *(d) Employ and pay the expense of accountants, investment*
34 *advisors, agents, depositaries, and employees.*

35 *(e) Operate for a period of 45 days after the issuance of the*
36 *letters of guardianship or conservatorship, at the risk of the estate,*
37 *a business, farm, or enterprise constituting an asset of the estate.*

38 ~~SEC. 7.~~

39 *SEC. 17. Section 2543 of the Probate Code is amended to read:*

1 2543. (a) If estate property is required or permitted to be sold,
2 the guardian or conservator may:

3 (1) Use discretion as to which property to sell first.

4 (2) Sell the entire interest of the estate in the property or any
5 lesser interest therein.

6 (3) Sell the property either at public auction or private sale.

7 (b) Subject to Section 1469, unless otherwise specifically
8 provided in this article, all proceedings concerning sales by
9 guardians or conservators, publishing and posting notice of sale,
10 reappraisal for sale, minimum offer price for the property, reselling
11 the property, report of sale and petition for confirmation of sale,
12 and notice and hearing of that petition, making orders authorizing
13 sales, rejecting or confirming sales and reports of sales, ordering
14 and making conveyances of property sold, and allowance of
15 commissions, shall conform, as nearly as may be, to the provisions
16 of this code concerning sales by a personal representative,
17 including, but not limited to, Articles 6 (commencing with Section
18 10300), 7 (commencing with Section 10350), 8 (commencing with
19 Section 10360), and 9 (commencing with Section 10380) of
20 Chapter 18 of Part 5 of Division 7. The provisions concerning
21 sales by a personal representative as described in the Independent
22 Administration of Estates Act, Part 6 (commencing with Section
23 10400) of Division 7 shall not apply to this subdivision.

24 (c) Notwithstanding Section 10309, if the last appraisal of the
25 conservatee's personal residence was conducted more than six
26 months prior to the confirmation hearing, a new appraisal shall be
27 required prior to the confirmation hearing, unless the court finds
28 that it is in the best interests of the conservatee to rely on an
29 appraisal of the personal residence that was conducted not more
30 than one year prior to the confirmation hearing.

31 (d) The clerk of the court shall cause notice to be posted pursuant
32 to subdivision (b) only in the following cases:

33 (1) If posting of notice of hearing is required on a petition for
34 the confirmation of a sale of real or personal property of the estate.

35 (2) If posting of notice of a sale governed by Section 10250
36 (sales of personal property) is required or authorized.

37 (3) If posting of notice is ordered by the court.

38 *SEC. 18. Section 2590 of the Probate Code is amended to read:*

39 2590. (a) The court may, in its discretion, make an order
40 granting the guardian or conservator any one or more or all of the

1 powers specified in Section 2591 if the court determines that, under
2 the circumstances of the particular guardianship or conservatorship,
3 it would be to the advantage, benefit, and best interest of the estate
4 to do so. Subject only to the requirements, conditions, or limitations
5 as are specifically and expressly provided, either directly or by
6 reference, in the order granting the power or powers, and if
7 consistent with Section 2591, the guardian or conservator may
8 exercise the granted power or powers without notice, hearing, or
9 court authorization, instructions, approval, or confirmation in the
10 same manner as the ward or conservatee could do if possessed of
11 legal capacity.

12 *(b) The guardian or conservator does not have a power specified*
13 *in Section 2591 without authorization by a court under this article*
14 *or other express provisions of this code.*

15 *SEC. 19. Section 2591 of the Probate Code is amended to read:*
16 2591. The powers referred to in Section 2590 are:

17 ~~(a) The power to contract for the guardianship or conservatorship~~
18 ~~and to perform outstanding contracts and thereby bind the estate.~~

19 ~~(b)~~

20 *(a) The power to operate, for a period longer than 45 days, at*
21 *the risk of the estate a business, farm, or enterprise constituting an*
22 *asset of the estate.*

23 ~~(c)~~

24 *(b) The power to grant and take options.*

25 ~~(d)~~

26 *(c) (1) The power to sell at public or private sale real or personal*
27 *property of the estate without confirmation of the court of the sale,*
28 *other than the personal residence of a conservatee.*

29 *(2) The power to sell at public or private sale the personal*
30 *residence of the conservatee as described in Section 2591.5 without*
31 *confirmation of the court of the sale. The power granted pursuant*
32 *to this paragraph is subject to the requirements of Sections 2352.5*
33 *and 2541.*

34 *(3) For purposes of this subdivision, authority to sell property*
35 *includes authority to contract for the sale and fulfill the terms and*
36 *conditions of the contract, including conveyance of the property.*

37 ~~(e)~~

38 *(d) The power to create by grant or otherwise easements and*
39 *servitudes.*

40 ~~(f)~~

1 (e) The power to borrow money ~~and~~.

2 (f) ~~The power to give security for the repayment thereof of a~~
3 ~~loan.~~

4 (g) The power to purchase real or personal property.

5 (h) The power to alter, improve, ~~and repair or~~ raze, replace, and
6 rebuild property of the estate.

7 (i) The power to let or lease property of the estate, *or extend,*
8 *renew, or modify a lease of real property, for which the monthly*
9 *rental or lease term exceeds the maximum specified in Sections*
10 *2501 and 2555* for any purpose (including exploration for and
11 removal of gas, oil, and other minerals and natural resources) and
12 for any period, including a term commencing at a future time.

13 (j) The power to lend money on adequate security.

14 (k) The power to exchange property of the estate.

15 (l) The power to sell property of the estate on credit if any
16 unpaid portion of the selling price is adequately secured.

17 (m) The power to commence and maintain an action for
18 partition.

19 (n) The power to exercise stock rights and stock options.

20 (o) The power to participate in and become subject to and to
21 consent to the provisions of a voting trust and of a reorganization,
22 consolidation, merger, dissolution, liquidation, or other
23 modification or adjustment affecting estate property.

24 (p) The power to pay, collect, compromise, ~~arbitrate,~~ or
25 otherwise adjust claims, debts, or demands upon the guardianship
26 or conservatorship *described in subdivision (a) of Section 2501,*
27 *Section 2502 or 2504, or to arbitrate any dispute described in*
28 *Section 2406.*

29 ~~(q) The power to employ attorneys, accountants, investment~~
30 ~~counsel, agents, depositaries, and employees and to pay the~~
31 ~~expense.~~

32 *SEC. 20. Section 2591.5 of the Probate Code is amended to*
33 *read:*

34 2591.5. (a) Notwithstanding any other provisions of this article,
35 a conservator seeking an order under Section 2590 authorizing a
36 sale of the conservatee's personal residence shall demonstrate to
37 the court that the terms of sale, including the price for which the
38 property is to be sold and the commissions to be paid from the
39 estate, are in all respects in the best interests of the conservatee.

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, ~~except the requirements regarding appraisal times in subdivision (b).~~

SEC. 21. Section 2620.1 is added to the Probate Code, to read:
2620.1. The Judicial Council shall, by January 1, 2009, develop guidelines to assist investigators and examiners in reviewing accountings and detecting fraud.

~~SEC. 8.~~

SEC. 22. Section 2620.2 of the Probate Code is amended to read:

2620.2. (a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

1 (b) Failure to file the accounting within the time specified under
2 subdivision (a), or within 45 days of actual receipt of the notice,
3 whichever is later, shall constitute a contempt of the authority of
4 the court as described in Section 1209 of the Code of Civil
5 Procedure.

6 (c) If the conservator or guardian does not file an accounting
7 with all appropriate supporting documentation and set the
8 accounting for hearing as required by Section 2620, the court shall
9 do one or more of the following and shall report that action to the
10 bureau established pursuant to Section 6510 of the Business and
11 Professions Code:

12 (1) Remove the conservator or guardian as provided under
13 Article 1 (commencing with Section 2650) of Chapter 9 of Part 4
14 of Division 4.

15 (2) Issue and serve a citation requiring a guardian or conservator
16 who does not file a required accounting to appear and show cause
17 why the guardian or conservator should not be punished for
18 contempt. If the guardian or conservator purposely evades personal
19 service of the citation, the guardian or conservator shall be
20 immediately removed from office.

21 (3) Suspend the powers of the conservator or guardian and
22 appoint a temporary conservator or guardian, who shall take
23 possession of the assets of the conservatorship or guardianship,
24 investigate the actions of the conservator or guardian, and petition
25 for surcharge if this is in the best interests of the ward or
26 conservatee. Compensation for the temporary conservator or
27 guardian, and counsel for the temporary conservator or guardian,
28 shall be treated as a surcharge against the conservator or guardian,
29 and if unpaid shall be considered a breach of condition of the bond.

30 (4) (A) Appoint legal counsel to represent the ward or
31 conservatee if the court has not suspended the powers of the
32 conservator or guardian and appoint a temporary conservator or
33 guardian pursuant to paragraph (3). Compensation for the counsel
34 appointed for the ward or conservatee shall be treated as a
35 surcharge against the conservator or guardian, and if unpaid shall
36 be considered a breach of a condition on the bond, unless for good
37 cause shown the court finds that counsel for the ward or
38 conservatee shall be compensated according to Section 1470. The
39 court shall order the legal counsel to do one or more of the
40 following:

1 (i) Investigate the actions of the conservator or guardian, and
2 petition for surcharge if this is in the best interests of the ward or
3 conservatee.

4 (ii) Recommend to the court whether the conservator or guardian
5 should be removed.

6 (iii) Recommend to the court whether money or other property
7 in the estate should be deposited pursuant to Section 2453, 2453.5,
8 2454, or 2455, to be subject to withdrawal only upon authorization
9 of the court.

10 (B) After resolution of the matters for which legal counsel was
11 appointed in subparagraph (A), the court shall terminate the
12 appointment of legal counsel, unless the court determines that
13 continued representation of the ward or conservatee and the estate
14 is necessary and reasonable.

15 (5) If the conservator or guardian is exempt from the licensure
16 requirements of Chapter 6 (commencing with Section 6500) of
17 Division 3 of the Business and Professions Code, upon ex parte
18 application or any notice as the court may require, extend the time
19 to file the accounting, not to exceed an additional 30 days after
20 the expiration of the deadline described in subdivision (a), where
21 the court finds there is good cause and that the estate is adequately
22 bonded. After expiration of any extensions, if the accounting has
23 not been filed, the court shall take action as described in paragraphs
24 (1) to (3), inclusive.

25 (d) Subdivision (c) does not preclude the court from additionally
26 taking any other appropriate action in response to a failure to file
27 a proper accounting in a timely manner.

28 *SEC. 23. Section 2628 of the Probate Code is amended to read:*

29 2628. ~~(a) As used in this section, “public benefit payments”~~
30 ~~means payments received or to be received under either or both~~
31 ~~of the following:~~

32 ~~(1) Part 3 (commencing with Section 11000) of, Part 4~~
33 ~~(commencing with Section 16000) of, or Part 5 (commencing with~~
34 ~~Section 17000) of, Division 9 of the Welfare and Institutions Code.~~

35 ~~(2) Subchapter II (commencing with Section 401) of, or Part A~~
36 ~~of Subchapter XVI (commencing with Section 1382) of, Chapter~~
37 ~~7 of Title 42 of the United States Code.~~

38 ~~(b)~~

2628. (a) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than ~~seven~~ *fifteen* thousand ~~five hundred~~ dollars ~~(\$7,500)~~ (\$15,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than ~~one~~ *two* thousand dollars ~~(\$1,000)~~ (\$2,000).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(e)

(b) Notwithstanding that the court has made an order under subdivision ~~(b)~~ (a), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this chapter or the court on its own motion may make that an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d)

(c) For any accounting period during which all of the conditions of subdivision ~~(b)~~ (a) are not satisfied, the guardian or conservator shall present the account as otherwise required by this chapter.

SEC. 24. Section 2647 is added to the Probate Code, to read:

2647. No attorney fees may be paid from the estate of the ward or conservatee without prior court order. The estate of the ward or conservatee is not obligated to pay attorney fees established by any engagement agreement or other contract until it has been approved by the court. This does not preclude an award of fees by the court pursuant to this chapter even if the contractual obligations are unenforceable pursuant to this section.

SEC. 25. Chapter 2 (commencing with Section 2910) is added to Part 5 of Division 4 of the Probate Code, to read:

CHAPTER 2. PREFILING INVESTIGATION BY PUBLIC GUARDIAN

2910. (a) Upon a showing of probable cause to believe that a person is in substantial danger of abuse or neglect and needs a

1 conservator of the person, the estate, or the person and estate for
2 his or her own protection, the public guardian or the county's
3 adult protective services agency may petition for either or both of
4 the orders of the court provided in subdivision (b) in connection
5 with his or her investigation to determine whether a petition for
6 the appointment of the public guardian as conservator of the
7 person, estate, or the person and estate of the person would be
8 necessary or appropriate.

9 (b) The petition may request either or both of the following
10 orders for the limited purposes of the investigation concerning a
11 person:

12 (1) An order authorizing identified health care providers or
13 organizations to provide private medical information about the
14 person to the public guardian's authorized representatives.

15 (2) An order authorizing identified financial institutions or
16 advisors, accountants, and others with financial information about
17 the person to provide the information to the public guardian's
18 authorized representatives.

19 (c) Notice of the hearing and a copy of the petition shall be
20 served on the person who is the subject of the investigation in the
21 manner and for the period required by Section 1460 or, on
22 application of the public guardian contained in or accompanying
23 the petition, on an expedited basis in the manner and for the period
24 ordered by the court. The court may dispense with notice of the
25 hearing only on a showing of facts demonstrating an immediate
26 threat of substantial harm to the person if notice is given.

27 2911. A court order issued in response to a public guardian's
28 petition pursuant to Section 2910 shall do all of the following:

29 (a) Authorize health care providers to disclose a person's
30 confidential medical information as permitted under California
31 law, and also authorize disclosure of the information under federal
32 medical privacy regulations enacted pursuant to the Health
33 Insurance Portability and Accountability Act of 1996.

34 (b) Direct the public guardian or the adult protective services
35 agency to keep the information acquired under the order
36 confidential, except as disclosed in a judicial proceeding or as
37 required by law enforcement or an authorized regulatory agency.

38 (c) Direct the public guardian or the adult protective services
39 agency to destroy all copies of written information obtained under
40 the order or give them to the person who was the subject of the

1 *investigation if a conservatorship proceeding is not commenced*
2 *within 60 days after the date of the order. The court may extend*
3 *this time period as the court finds to be in the subject's best*
4 *interest.*

5 *SEC. 26. The heading of Chapter 2 (commencing with Section*
6 *2920) of Part 5 of Division 4 of the Probate Code is amended and*
7 *renumbered to read:*

8
9 CHAPTER 2-3. APPOINTMENT OF PUBLIC GUARDIAN

10
11 *SEC. 27. Section 2923 of the Probate Code is amended to read:*

12 2923. On or before January 1, 2008, the *public administrator,*
13 *public guardian, and public conservator* shall comply with the
14 continuing education requirements that are established by the
15 California State Association of Public Administrators, Public
16 Guardians, and Public Conservators.

17 *SEC. 28. The heading of Chapter 3 (commencing with Section*
18 *2940) of Part 5 of Division 4 of the Probate Code is amended and*
19 *renumbered to read:*

20
21 CHAPTER 3-4. ADMINISTRATION BY PUBLIC GUARDIAN

22
23 *SEC. 29. The heading of Chapter 4 (commencing with Section*
24 *2950) of Part 5 of Division 4 of the Probate Code is amended and*
25 *renumbered to read:*

26
27 CHAPTER 4-5.
28 FINANCIAL ABUSE OF MENTALLY IMPAIRED ELDERS

29
30 ~~SEC. 9.~~

31 *SEC. 30. Section 21350 of the Probate Code is amended to*
32 *read:*

33 21350. (a) Except as provided in Section 21351, no provision,
34 or provisions, of any instrument shall be valid to make any donative
35 transfer to any of the following:

36 (1) The person who drafted the instrument.

37 (2) A person who is related by blood or marriage to, is a
38 domestic partner of, is a cohabitant with, or is an employee of, the
39 person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of that law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(6) A care custodian of a dependent adult who is the transferor, if the instrument creating or modifying the donative transfer is dated after the date that the person receiving the transfer became the care custodian for that transferor.

(7) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, a person who is described in paragraph (6).

(b) For purposes of this section, “a person who is related by blood or marriage” to a person means all of the following:

(1) The person’s spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person’s spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

(c) For purposes of this section, the term “dependent adult” has the meaning as set forth in Section 15610.23 of the Welfare and Institutions Code and also includes those persons who (1) are older than age 64 and (2) would be dependent adults, within the meaning of Section 15610.23, if they were between the ages of 18 and 64. The term “care custodian” has the meaning as set forth in Section 15610.17 of the Welfare and Institutions Code.

(d) For purposes of this section, “domestic partner” means a domestic partner as defined under Section 297 of the Family Code.

SEC. 31. Section 3.5 of this bill shall become operative only if SB 800 is enacted and becomes effective on or before January 1, 2008, in which case Section 3 shall not become operative.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for

1 *certain costs that may be incurred by a local agency or school*
2 *district because, in that regard, this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 *However, if the Commission on State Mandates determines that*
9 *this act contains other costs mandated by the state, reimbursement*
10 *to local agencies and school districts for those costs shall be made*
11 *pursuant to Part 7 (commencing with Section 17500) of Division*
12 *4 of Title 2 of the Government Code.*